

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

75-7226
ORIGINAL

To be argued by
Murray L. Lewis

No. 75-7226

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

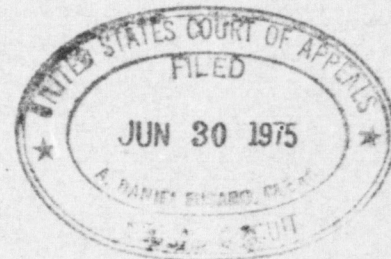
PETER V. KEILEY,

Plaintiff-Appellant,

-against-

ELBERT HINKSON, etc., et al.,

Defendants-Appellees



On Appeal from the United States District
Court for the Southern District of New York

BRIEF FOR DEFENDANTS-APPELLEES

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APPELLEES' BRIEF

Preliminary Statement

Plaintiff is appealing from an order of the United States District Court, Southern District of New York (WYATT, J.), entered April 3, 1975, which denied plaintiff's motion for the convening of a three-judge court and granting summary judgment to appellees.

QUESTIONS PRESENTED

Plaintiff is a "scofflaw." He commenced this proceeding seeking a declaration that the statutes establishing the New York City Parking Violations Bureau (hereinafter "P.V.B.") were unconstitutional. In his papers, plaintiff contends that the P.V.B. is an illegal court rendering illegal judgments. He further states that the additional fines assessed by the P.V.B. when a parking violator defaults and fails to pay the parking ticket

within the time prescribed by law is a violation of the equal protection and due process clauses of the United States Constitution. The questions thus presented are:

1. Did the State and City of New York have authority under the United States Constitution to establish the P.V.B.?

2. Does the United States Constitution preclude the P.V.B. from entering an enforceable judgment?

3. May the P.V.B. assess an additional fine against a parking violator who has defaulted and failed to pay the fine within the prescribed period of time allowed by law?

4. Did the Court below properly grant summary judgment to appellees and deny plaintiff's application for the convening of a three-judge court to determine the purported constitutional question raised by him?

FACTS

Plaintiff had received numerous parking violations both before and after the creation of the P.V.B. On February 28, 1972, he paid those default judgments entered prior to the creation of P.V.B. He, however, still had outstanding numerous parking violations issued subsequent to the commencement of P.V.B. The record shows that 21 default judgments were rendered on July 17, 1971, on summonses issued between July 1, 1971, and February 22, 1972; 8 defaults were entered on September

11, 1972, on parking violations issued between April 3, 1972, and June 14, 1972; 6 defaults were entered as a result of parking violations issued between June 20, 1972, and August 11, 1972, and an additional 8 judgments were entered for parking violations issued between September 7, 1972, and February 8, 1973. These judgments were entered in the Civil Court of the City of New York pursuant to the Vehicle and Traffic Law of the State of New York and the Administrative Code of the City of New York (70).

It is these default judgments which lay the foundation for plaintiff's contention that his constitutional rights have been violated. He contends that the P.V.B. had no constitutional authority to enter the judgments as the P.V.B. was acting as an illegal court in rendering the judgments.

On these judgments an additional fine, above the amount specified on the summons was levied because of plaintiff's failure to pay the original fine within the time prescribed by law (71). In no event did the additional fine exceed \$25.00 in any one instance nor did the total fine for any one violation exceed \$50.00 (71).

After the entry of the judgments plaintiff was contacted by a New York City Marshall who was attempting to collect the judgments (83). Plaintiff paid some of the judgments (124), but at no time did he pay the full amount

of all the outstanding parking violations. As a result, in January 1973, plaintiff was informed by the New York State Department of Motor Vehicles that his motor vehicle registration would not be renewed unless he paid the outstanding parking fines. (124).

Plaintiff thereafter purportedly attempted to ascertain the full amount of parking violations outstanding as against him. Seemingly, he had some difficulty in determining what judgments had been entered against him (80). The record, however, clearly shows that the judgments were entered in the Civil Court of the City of New York (70).

Plaintiff further averred that he attempted to vacate the judgments (81), but the Administrative Judge of the Civil Court had issued a directive ordering that all P.V.B. matters be referred back to the P.V.B. and that no Order to Show Cause should be issued out of the Civil Court (72, 153). After being informed of this, plaintiff commenced this action.

ARGUMENT

PLAINTIFF RAISES NO FEDERAL
QUESTION AND HIS ACTION WAS
CORRECTLY DISMISSED.

(1)

The P.V.B. was established pursuant to Vehicle and Traffic Law, Article 2-B (Sections 235-244) and the Administrative Code of the City of New York, Chapter 40 (Sections 883a-1.0 - 883a-10.0). Pursuant to these statutes the P.V.B. was granted authority to hear and determine complaints of traffic infractions consisting of parking violations. The P.V.B. is authorized to assess a fine for parking violations, not to exceed \$50.00 for each violation.

The P.V.B. is required to provide any person entering a plea of not guilty to the violations a hearing before a hearing examiner. No charge can be established unless there is a preponderance of evidence as to the guilt of the individual. The statutes further provide for the right of appeal within the P.V.B. and thereafter judicial review pursuant to Article 78 of the Civil Practice Law and Rules.

Plaintiff contends that these statutes create "an illegal and unconstitutional Court" (App. Br., p. 16). The plaintiff, however, fails to cite any case which constitutionally prohibits a State from establishing

administrative tribunals exercising quasi-judicial power to hear and determine parking violations. The cases cited by plaintiff deal with the right of an individual to have a fair and impartial hearing before administrative tribunals. See Appellant's brief, pp. 17-18.

That the States have the authority to establish their own systems of hearing and determining civil disputes has long been recognized. The United States Supreme Court in Byrd v. Blue Ridge Rural Electric Co-op, Inc., 356 U.S. 525, 536 (1957), said:

"A State may, of course, distribute the functions of its judicial machinery as it sees fit".

The establishment of the P.V.B. was, we submit, constitutionally authorized.

Whether or not the P.V.B. acted within its jurisdictional authority is a question to be determined by the State itself. Mechanics' etc. Bank v. Union Bank, 22 Wall 276, (1874). In the Mechanics Bank case, the United States Supreme Court recognized the right of a State to create a Provost Court to hear both criminal and civil cases. The Supreme Court recognized that:

"it is not for us to inquire whether the Provost Court acted within its jurisdiction or not. That is a question exclusively for the State tribunals. In determining, as the State Supreme Court did, that the plaintiffs had no such constitutional immunity as they claim, there was no error." (p. 297).

In this case, it is not even necessary to go as far as the United States Supreme Court did in the Mechanics Bank Case. The P.V.B. was established to hear and determine only parking violations, which is a civil wrong and not a crime. Kinney Car Corp. v. City of New York, 58 Misc. 2d 265 (Dist. Ct. Nassau Co., 1968). The hearing and determination by the P.V.B. of civil wrongs does not deprive plaintiff of any constitutionally guaranteed right. There is no constitutional guarantee that a parking violator should be tried by a judge within the confines of an established court system. Cf. Palmore v. United States, 411 U.S. 389 (1973).

The P.V.B. was established pursuant to legislative enactment and constitutes a legal, constitutional administrative agency qualified to hear and determine parking violations and to assess fines in respect thereto.

(2)

Plaintiff additionally urges that the judgments that were entered by the P.V.B. were not in "conformity with the CPLR" (App. Brief, p. 20). He contends that because the entry of the judgments purportedly violate State law, he was denied due process.

He thus is asking this Court to hold that the P.V.B. violated New York State law. It is submitted that such a determination must be left to the courts of this State. Cf. Wardius v. Oregon, 412 U.S. 470, 477 (1973).

In any event, even assuming, arguendo, that the judgments were illegally entered, no constitutional question is raised. Plaintiff could and should attack the validity of the judgments in a proceeding in the State court. See Wardius v. Oregon, supra; Mechanics' etc. Bank v. Union Bank, supra.

(3)

The enabling statutes provide that the P.V.B. may assess fines for parking violations not to exceed \$50.00. Under this authority the P.V.B. has established an initial fine which is increased upon a default by the violator. After the default a notice is sent to the individual who is advised as to the amount of the original fine and any additional fine assessed by the P.V.B. The violator is then given additional time to pay this fine. If, however, he defaults in payment of the new fine an additional assessment is made.

Plaintiff argues that this procedure is unconstitutional. To support this contention he cites such cases as Berger v. City and County of Denver, 350 P. 2d 192 (Colo., 1960) (App. Brief, p.27). This case, like the others cited by plaintiff, involved the statute and Constitution of the State in question. No determination was made as to the constitutionality of such increased fine under the United States Constitution.

In Marder v. Massachusettes, 377 U.S. 407 (1964),

rehearing denied 379 U.S. 871, the United States Supreme Court held that there was no substantial federal question where different penalties were assessed against individuals who pleaded guilty as compared to those who pleaded not guilty to traffic infractions. Similarly, no substantial federal question exists herein where a higher fine is imposed on a defaulting parking violator than that which is imposed upon one who pays his fine within the time prescribed by law. See People v. Carter, n.o.r., 325 N.Y.S. 2d 772 (County Ct., Oneida Co., 1971).*

It very well may be that a New York Court might declare certain of the practices of the P.V.B. to be invalid under New York State Law (which plaintiff seemingly urges), but that does not confer jurisdiction on this Court to make such a determination. The matter is one solely for determination by the State of New York.

(4)

As has been shown above, no federal question had been raised so as to require the creation of a three-judge Court. The mere fact that the plaintiff alleges an unconstitutional course of conduct does not in fact raise such an issue. It is necessary to view the facts

* The Court in the Carter case, did exclude from consideration the validity of imposing an increased fine based solely upon a time element but only after it held that no issue was raised posing a federal constitutional question (p. 773). It is submitted that no federal constitutional question is raised herein.

and determine whether the allegation has some basis or is frivolous. The facts and the law in this case mandate a holding that plaintiff's claims regarding the unconstitutionality of the P.V.B. and its activities are totally frivolous.

There has been no violation of the United States Constitution. If there is some violation of State law, either in the manner of docketing of the judgments or in the creation itself of the P.V.B., such questions should be relegated to the State Courts for their determination.



CONCLUSION

The determination of the Court below
should be affirmed in all respects.

Respectfully submitted,

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